## COUNTY OF KAUAI Minutes of Meeting **Open Session**

Board/Con	nmittee:	LIQUOR CONTROL COMMISSION	Meeting Date	November 2, 2	2017
Location	Moʻikeha Building, Meeting Room #3		Start of Meeting: 4:00 p.m.		End of Meeting: 5:36 p.m.
Present	Chair Jean Iida, Vice Chair William Gibson; Members: Shirley Akita, Paul Endo, Maryanne Kusaka, Gary Pacheco				
	Also: Liquor Control Staff: Director Gerald Rapozo, Private Secretary Cherisse Zaima; Deputy County Attorney Nicholas Courson				
Excused	Gerald Matsunaga				
Absent					

SUBJECT	DISCUSSION	ACTION
Call To Order		Chair Iida called the meeting to order at 4:00 p.m. with 6 members present, constituting a quorum.
Roll Call	Director Rapozo called roll, noting 6 members were present.	
Approval of the Agenda		Ms. Akita moved to approve the agenda. Mr. Pacheco seconded the motion. Motion carried 6:0.
<b>Executive Session</b>	1. EXECUTIVE SESSION:  Pursuant to Hawai'i Revised Statutes §§92-4 and 92-5 (a) (4) the purpose of this executive session is to consult with the Commission's legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to this item, deliberate and take such action as appropriate.	Mr. Pacheco moved to enter into executive session. Mr. Gibson seconded the motion. Motion carried 6:0.

Return to Open		The meeting resumed in Open Session at 4:17
Session		p.m.
Public Hearing	<ol> <li>NEW LIQUOR LICENSE:</li> <li>a) KAUAI DISTILLING COMPANY: Application No. 2018-027 was filed on August 15, 2017 by LBD Coffee, LLC dba Kauai Distilling Company for a New Manufacturer Other Specified Liquor license at 5907 C Kawaihau Road, Kapaa, Kauai, Hawaii. The Commission accepted Application No. 2018-027 for publication and public hearing on September 7, 2017 and ordered to print notices of public hearing in The Garden Island newspaper on Wednesdays, September</li> </ol>	p.m.
	<ul> <li>13 &amp; 20, 2017, scheduling the public hearing on Thursday, November 2, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu'e Civic Center, Moikeha Building, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i.</li> <li>Mr. Ty Erum, Manager, was present on behalf of the licensee. Mr. Erum stated he did not received a copy of the investigator's report, noting that all documents relating to the application went directly to their attorney, Jacob</li> </ul>	
	Delaplane. Staff provided copies of the report to Mr. Erum.  Up until the time of the hearing, the Department did not receive any letters in support or opposition of the application.	
	The Commission received testimony from Ms. Linda Driscoll in opposition. Ms. Driscoll resides at 5927 Kawaihau Road. Ms. Driscoll stated they have no information on the applicant's proposed use, or what it entails. Because of that she is unable to say whether she objects or not, but the people she has spoken to so far do not know either. She asked whether anyone could give her the information she is looking for, or whether she could ask her questions and have them answered. Deputy County Attorney Courson explained that the Commission is currently in a Public Hearing to make a	

decision on an application. The Commission is not in a position to answer her questions, nor is it the proper venue in which to have a question and answer session with the applicant. Providing testimony would be the appropriate action at this point.

Ms. Driscoll stated her objection to the application, noting the research she has conducted on liquor manufacturing. Of the 12 processes she has researched, historically 7 of them have one or more significant risk of fire, explosion or implosion and loss of life. Additionally, much of the distillation process results in waste, and she wants to know how and where this waste will be contained and disposed of, and what will happen in the case of fire or explosion. She expressed concerned over the term "Other Specified Liquor", and would like clarification on what that means. She feels approval of this license would set a precedent, and opens up their area for additional manufacturing which will change the entire character of the neighborhood, drastically lower the property values, and increase health hazards. Ms. Driscoll stated one of the health hazards she came across had to do with mold, which she is highly allergic to, stating her lung capacity is at 56 percent.

In response to Commissioner Gibson, Ms. Driscoll explained where her residence is located in relation to the proposed distillery, which is within the 500 foot radius.

The Commission received testimony from Mr. Les Gale in opposition. Mr. Gale resides at 5956 Kawaihau Road. Mr. Gale stated his opposition is related to smell, explaining that he grew up in an area where people had their own distilleries, and it was always apparent to him when someone was making moonshine because of the smell. He questioned what the applicant is going to do to address that concern, stating it is not a pleasant smell, and comparing it to 1,000 cows defecating and urinating in your backyard. Mr. Gale expressed concern about the term "Other Specified Liquor", and wants

to know what the "other" is. If it cannot be clarified, he would like it stricken from the application. Director Rapozo explained that classes of licenses are defined by Kind. The Kinds of licenses are Beer, Beer & Wine, General, or Other Specified Liquors. Because this application is for a Manufacturer license, they have to register with the Bureau of Alcohol, Tobacco and Firearms for a Basic Permit. That Basic Permit issued by the Federal government states what specific type of alcohol they can distill.

Liquor Control Investigator Cecilio Baliaris, Jr. stated that the applicant conveyed that would be distilling bourbon and whiskey, but they have not received anything from ATB to verify that.

Mr. Gale requested that the term "Other Specified Liquors" be stricken from the application to which Director Rapozo explained the term "Other Specified Liquors" is the way it is written in the Hawaii Revised Statutes as the Class of license, but the Basic Permit the applicant receives from the Federal government will specify the type of liquor. Director Rapozo ensured Mr. Gale that the license will not be issued until that information is received to which Mr. Gale stated that if it is issued without that information, he will "find where you live." Mr. Gale noted that the applicant does not live there, and will not have to live with the smells as the other residents do. He feels it is the wrong place to put a distillery, in the middle of a neighborhood.

The Commission received testimony from Elaine Valois in opposition. Ms. Valois resides at 5956 Kawaihau Road, Unit B. Ms. Valois stated her main objection is where the distillery is being placed, which is in a densely populated residential area. The size of the property does not seem appropriate for what is being built there. She feels it is also environmentally inappropriate for a heavily populated area as it is basically a factory. The property values will go down greatly, and cannot imagine anyone wanting to purchase a home next to a distillery. Ms. Valois is also concerned about

where these distilleries are placed on the island, noting this is not a factory island; the location is not appropriate. She expressed concerns over black soot and mold that will be expelled into the air, and will get into the house, and will affect the lungs.

The Commission received testimony from Jerry Driscoll in opposition. Mr. Driscoll resides at 5927 Kawaihau Road. Mr. Driscoll stated his property is adjacent to the applicant's property; they share a common boundary for 400 feet. Mr. Driscoll is a retired professor of chemistry from the University of Utah, noting the risks both small and large in reference to distilleries. He provided some statistics on fires, explosions, and hazardous vapors associated with distilleries. His other concern is with the effluence, and carbon dioxide that will be emitted, and that will contribute to pollutants such as mold as well as noxious odors. He feels these problems could be solved if the applicant would be willing to move three-quarters of a mile down to the industrial park.

Commissioner Kusaka asked to clarify that he would not be opposed to the application if it were located in the industrial area to which Mr. Driscoll replied yes, he just does not want it in his neighborhood.

The Commission received testimony from Matt Santos in opposition. Mr. Santos resides at 5921 Kawaihau Road. Mr. Santos stated he does not know much about distilleries, but he is concerned with the noise that will be generated from this manufacturing process. He is concerned with the smells that will be emitted, and questions where will the smells disperse. He is also concerned with the hours of operation, noting there are many houses nearby. Mr. Santos feels this is the wrong place for this type of operation.

The Commission received testimony from Nelly Bunao in opposition. Ms. Bunao resides at 5923 Kawaihau Road Unit D. Ms. Bunao stated she echoes the concerns expressed by the previous testifiers, and has learned

some new information as well. She asked if any information was sent out to the neighbors besides the Notice of Hearing to which Director Rapozo explained that by law, the letter the applicant sends out can only contain the hearing notice information. The applicant is not allowed to send out any documents that could be considered promotional materials or advertisements for the proposed business. Ms. Bunao stated her opposition is based on the environmental pollution and health hazards. She also noted that she works shifts, and this operation will create much more noise than she is used to, which will affect her and her family. She is also concerned about traffic, and driveway access, stating she is concerned that they will be utilizing her part of the driveway to access their property. Ms. Bunao stated that she heard that the applicant was planning to have a visitor center, and questioned if that was allowed, which she feels will create more noise, traffic and homeless people hanging around. She asked who will police the area should they encounter any squatters in the area.

The Commission received testimony from Sissy Morgan in opposition. Ms. Morgan owns properties at 5906 B, 5910, 5898, and 5898 A Kawaihau Road. Ms. Morgan's objection is based on the lack of information they have received. She has spoken to the owner, who mentioned nothing to her about obtaining a liquor license, giving her the impression it was a warehouse for his coffee and his tobacco. Now it has evolved into a distillery, which they know nothing about. Ms. Morgan has six grandchildren that live on her property, and she is greatly concerned about their health, noting one of her grandchildren already has health issues. She stated that the dust already created from the cleaning and growing that has begun has already affected them, which she says did not seem to be of concern to the owner when she spoke to him about it. She has spoken to the applicant more than once and feels he is not worried about the neighbors, only his business. Ms. Morgan explained that they do not even agree with the warehouse he currently has to dry his coffee and tobacco, and now it has evolved into this and that, seemingly because he cannot obtain the proper

permits. She feels this most recent evolution is absolutely a problem for everyone in the community, commenting that it is unknown what kind of smoke it will emit. Ms. Morgan stated the applicant has expressed to her that all people do on Kauai is complain, and causes him to have to install expensive equipment to appease the neighbors. Ms. Morgan refuted this and feels that what they are trying to do is protect their families and their land for the future generations. Her impression is that the applicant does not care about how what he is doing on his property is affecting people in the neighborhood, and is only concerned with his bottom line. Ms. Morgan stated that the applicant is currently suing the County over use permits, and questioned how the Commission can grant him a liquor license when he is suing the County, and has been dishonest with what his plans are. Ms. Morgan stated she has shown the applicant videos of dust from his property coming into her homes, and states she was told by the applicant that he is within his legal rights.

Mr. Santos provided written testimony to be distributed to the Commission. Mr. Santos also stated he did not receive a Notice of Hearing though he is within the 500 foot radius.

Mr. Ty Erum, Manager of Kauai Distilling Company addressed the Commission and the members of the public. Mr. Erum stated that it seems that the main concerns shared by the public is the lack of information, and expressed his willingness to be more transparent with the neighbors by speaking to them directly. Should he not have all of the answers they are looking for, the owner can also provide information to them.

In reference to the grain dust that was mentioned by one testifier, Mr. Erum explained that they are attempting to be as modern as possible with this distillery, and create grain mills where the corn will be cooked down, making it a dust-free environment. He acknowledged the concern, noting that historically, there have instances of grain dust related fires; the process

they will use will eliminate the dust. In reference to the scientific evidence shared by another testifier regarding vapor pressures and combustion temperatures, Mr. Erum explained how their specific distilling process works and will be contained.

Mr. Erum stated that he has communicated with Ms. Morgan in the past, and she did raise her concerns about the dust. He explained that their property is on Agricultural land, which they have currently been using to grow tobacco, and cover crop. When Ms. Morgan contacted him, it was during a time that they were using a tractor and tiller in preparation for planting cover crop. Due to Ms. Morgan's concerns about the dust Mr. Erum states they did everything in their power to mitigate it by having staff follow the tractors with hoses to wet down the dirt.

After several interruptions from the audience, Attorney Courson reminded the public and the applicant's representative that this is a public hearing before a Commission of the County, and stated that for purposes of decorum he will demand a level of respect. He added that in order for the Commission Secretary to have an accurate record of the hearing, the cross talk must cease.

Mr. Erum continued by stating he does not want to be combative with the neighbors, especially considering he will be working at the site on a day to day basis. Though they are on Agricultural land, he understands that there are residences around them, and they want the distillery to be something the neighborhood can be proud of. Mr. Erum stated the LLC currently operates a coffee farm on Kawaihau Road just beyond Kapahi Park, which several publications such as Hana Hou magazine have done articles on.

Mr. Erum offered his contact information to anyone who wishes to speak with him about the distillery, noting that much of the concern seems to be the lack of information. Their goal is to be sustainable, and they hope to take the waste product from the mash and give it to another farm for animal feed; they are still in the process of getting that aspect approved, and are still working with several other departments in getting the proper approvals. He pointed out that this is a well thought out operation, and is not a "back-yard" distillery. He commented that the smells of cooking corn are pleasing to him, and just smell like food. Mr. Erum again offered to provide whatever information he could.

Commissioner Kusaka asked whether the property belongs to him to which Mr. Erum replied no, he is the manager of the company. The property is approximately 2 acres, the front of which will be used for growing tobacco and coffee. Using printouts of the aerial view of the property obtained from Google Maps, Mr. Erum pointed out the location of the proposed distillery building, the area where the coffee and tobacco are grown, and where the residential areas are; the distillery building will be toward the back of the property.

Commissioner Akita stated for clarification that neither Mr. Erum nor the owner of the property has taken the opportunity to meet with the community to share information on the project, and to answer any questions the community may have. She feels the questions the public has are not for the Commission to answer. Mr. Erum stated to his knowledge, the owner went around door to door to try and talk to the neighbors, noting that there are people who approve of the operation though they are not present today. Mr. Erum stated that they have not had a meeting with the community, but agreed that may be a good idea; he did not realize there would be this type of opposition.

Mr. Erum stated that Ms. Morgan claims the owner does not care about the people of Kauai. He pointed out at their other location where they roast coffee, and actual smoke is emitted, they have received complaints from the neighbors, and though he wasn't required to do so, the owner installed an

afterburner system at a cost of \$40,000 that burns off almost 100% of the smoke; he did this to address the concerns of the neighbors.

Attorney Courson noted for the Commission's consideration that the Public Hearing is still open, and the community has many questions that cannot be answered by the Commission. He does not feel it appropriate for a public hearing to turn into a question and answer forum. The normal procedure would be to the close the Public Hearing, and have the Commission make its decision today. However, if the applicant wishes, he can request a continuance of the hearing, which would allow him time to speak with the community members. If that is not an option he would like to exercise, the Commission can close the hearing and make their decision based on what was presented today. Attorney Courson added that should the Commission decide to continue the hearing, they have the option to close the public testimony portion of it today, which will not allow for any more public testimony at the next continued hearing.

Mr. Erum stated that he is not sure whether he will be making the best decision for the company by requesting a continuance, though he appreciates the option, but he would like to leave it up to the Commission on whether or not they would like a continuance. Attorney Courson stated that typical practice is that the Commission would close the public hearing after hearing from the applicant, and they will deliberate and make a decision. The decision is usually made on the same day, but the law allows them up to 90 days, with an allowable extension to 120 days to make a decision after closing the hearing. He advises against a continuance sua sponte, and recommends the Commission grant a continuance based on the applicant's request.

Commissioner Akita commented that if Mr. Erum would like a continuance, he should request it, and that if left up to the Commission, she recommends they move on.

concerns

time limit per testifier.

Mr. Erum request a recess to contact the applicant's attorney for advice regarding the continuance.

The meeting recessed at 5:10 p.m.

Mr. Erum requested a continuance to allow them time to communicate with the community members to answer questions, and address any of their The meeting resumed at 5:17 p.m.

Attorney Courson stated that since the applicant has requested a continuance, the Commission now needs to decide whether or not they would like to close the public testimony portion of the hearing, which would mean that no public testimony could be heard at the upcoming continued hearing. If they opt to keep the public testimony portion open, all the community members can re-testify at the upcoming continued hearing, which may make for a lengthy hearing. Commissioner Akita asked if testimony could be limited to any new information to which Attorney Courson replied it would be tricky because it is subjective as to what is considered new or old information. However, they could impose a 3-minute

In response to the Commission, Mr. Erum stated that a continuance a month from now would allow adequate time to arrange a meeting with the community.

Ms. Akita moved to continue the public hearing, with an imposed 3-minute time limit per testifier, to December 7, 2017. Ms. Kusaka seconded the motion. Motion carried 6:0.

b) HANALEI SPIRITS DISTILLERY CORP.: Application No. 2018-029 was filed on September 5, 2017 by Hanalei Spirits Distillery Corp. dba Hanalei Spirits Distillery for a New Manufacturer Other Specified Liquor license at 4241 Kahili Makai Street, Kīlauea, Kauai, Hawaii. The Commission accepted Application No. 2018-029 for publication and public hearing on September 7, 2017 and ordered to print notices of public hearing in The Garden Island newspaper on Wednesdays, September 13 & 20, 2017, scheduling the public hearing on Thursday, November 2, 2017 at 4:00 p.m. or shortly thereafter in Meeting Room #3 of the Līhu'e Civic Center, Moikeha Building, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i.

The Department did not receive any letters in support or opposition.

Grant Wells, President, was present. Mr. Wells pointed out that the hours of operation on the Investigators report shows 8:00 a.m. to 2:00 p.m.; it should read 8:00 a.m. to 5:00 p.m.

Mr. Wells stated they are a family owned farm, and have been farming there since 1988; his parents originally raised horses. They have since switched over to agricultural farming, and have started growing trees such as breadfruit and lilikoi, which will be used to flavor their liquors. They are planning to make a vodka out of ulu (breadfruit) as well as from other things grown on their property.

Mr. Wells stated that due to the Department of Health grouping them with distilleries on the mainland that produce 50,000 barrels a day, they are required to install a wastewater treatment plant, which requires regular testing to ensure nothing harmful is leaching into the soil. He feels it is a little excessive considering much of the waste can be valuable resources such as compost, and feed for cattle and pigs. He already has pig farmers contacting him.

	In response to Commissioner Endo, Mr. Wells stated their property is over 6 acres, and they are working toward producing all the ingredients for their product on-site.  In response to Commissioner Kusaka, Mr. Wells provided an explanation of where the property is located, noting they will not be doing any tours on the	
	property, but they hope to open a tasting room in a separate location; that will have to be explored to ensure they are in compliance with all laws once they decide to move forward with that. Director Rapozo explained that with Commission approval they would be allowed to do a tasting on-premises to which Mr. Wells replied they are not planning to do any tasting on-site.	
	Commissioner Kusaka asked how soon the distillery will be up and running to which Mr. Wells explained the still is currently being manufactured in Idaho, and he has already received his licensed from the TTB, and he hopes to be up and running by December.	
	Commissioner Akita asked if they have enough ulu on their property to produce vodka, as they mentioned to which Mr. Wells replied not currently, but they are working on getting their plants in the ground. He noted that the many farmers in the area have been growing ulu, but have no one to sell it to.	
	The public hearing was closed.	Mr. Pacheco moved to approve Application No. 2018-029. Ms. Akita seconded the motion. Motion carried 6:0.
Approval of the Minutes	APPROVAL OF THE MINUTES OF OCTOBER 19, 2017	Mr. Endo moved to approve minutes of October 19, 2017. Mr. Gibson seconded the motion. Motion carried 6:0.

## **DIRECTOR'S REPORT:** a) **INVESTIGATORS' REPORTS** b) INCOMING COMMUNICATIONS: (1) From Delicato Family Vineyards (2) From Craft Brew Alliance (3) From Jackson Family Enterprises (4) From The Wine Group (5) From Constellation Brands, Inc. (6) From Southern Glazer's Wine and Spirits (7) Disturbance Reports from Kauai Beach Resort, and Kauai Marriott Resort c) OUTGOING COMMUNICATIONS: (1) To Delicato Family Vineyards (2) To Craft Brew Alliance (3) To Jackson Family Enterprises (4) To The Wine Group (5) To Craft Brew Alliance (6) To Constellation Brands (7) To All Wholesale Licensees d) EMPLOYEES IN LICENSED PREMISES: Managers and Assistant Managers – See Attachment e) ACTIONS OF THE DIRECTOR: (1) BAMBOO GRILL (2) BEACH HOUSE RESTAURANT (3) FOODLAND PRINCEVILLE (4) PRINCEVILLE WINE MARKET

(5) ROB'S GOOD TIMES GRILL

	<ul> <li>(6) TORTILLA REPUBLIC</li> <li>(7) THE WINE SHOP</li> <li>(8) WRANGLER'S STEAKHOUSE</li> <li>(9) KAUAI CHAMBER OF COMMERCE</li> </ul>	
	f) <u>INFORMATIONAL MATTERS</u> :	Ms. Akita moved to accept Items 1(a) through 1(f). Mr. Pacheco seconded the motion. Motion carried 6:0.
2.	CHANGE IN CORPORATE OFFICERS:	
	(a) <u>QSI, INC.</u> : Resignation of Naoki Yoshida as President and Vice President; appointment of Hideki Okada as President and Director, and Reid Kazuo Matsumoto as Vice President, Assistant Secretary and Director.	Mr. Pacheco moved to approve the change in corporate officers. Mr. Gibson seconded the motion. Motion carried 6:0.
	(b) <u>FOOD PANTRY, LTD.</u> : Election of Vernon Ikebe as Vice President and Officer; Resignation of Colleen Hoon Ai Sullivan as Assistant Secretary and Assistant Treasurer; and resignation of Teruo Tsuruda as Officer	Ms. Akita moved to approve the change in corporate officers. Mr. Pacheco seconded the motion. Motion carried 6:0.
3.	2. <u>VIOLATION REPORTS</u> :	
	(a) <u>BAMBOO</u> : Violation of Rule 7.10 Bar Employee Records, and Rule 7.8 Manager on Duty.	Ms. Akita moved to call licensee for violation hearing. Mr. Gibson seconded the motion. Motion carried 6:0.
	(b) WB'S EXCLUSIVE LOUNGE LLC: Violation of Rule 7.7 Clearing of tables at closing time.	Ms. Akita moved to call licensee for violation hearing. Mr. Pacheco seconded the motion. Motion carried 6:0.
4.	SOLICITOR'S PERMIT:	
	MASAKI MIYAZAWA: Application No. 2018-047 filed on October 24, 2017 by Masaki Miyazawa for a Solicitor's Permit in	

	the County of Kauai to represent Wismettac Asian Foods, Inc., a Wholesale General licensee in the City & County of Honolulu. Deposited \$180.	Mr. Endo moved to approve the solicitor's permit. Ms. Akita seconded the motion. Motion carried 6:0.
5.	EXECUTIVE SESSION	
	Pursuant to Hawai'i Revised Statutes §§92-4 and 92-5 (a) (2) (4), the purpose of this executive session is to consider the evaluation of an officer or employee where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held, and to consult with the Commission's legal counsel on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities as they may relate to this item, deliberate and take such action as appropriate.	
	Attorney Courson explained that this executive session would be to discuss the annual job performance evaluation of the Director, and noted that Commissioner Matsunaga was not present.	Ms. Kusaka moved to defer the executive session to the November 16, 2017 meeting. Ms. Akita seconded the motion. Motion carried 6:0.
Announcements	Next Scheduled Meeting: Thursday, November 16, 2017 – 4:00 pm, Mo'ikeha Building, Meeting Room #3.	
Adjournment		Chair Iida adjourned the meeting at 5:36 p.m.